



Signed and Filed: November 26, 2019

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
- and - ) Chapter 11  
PACIFIC GAS AND ELECTRIC COMPANY, ) Jointly Administered  
Debtors. )  
Date: December 4, 2019  
☐ Affects PG&E Corporation ) Time: 10:00 AM  
☐ Affects Pacific Gas and ) Place: Courtroom 17  
Electric Company ) 450 Golden Gate Ave.  
☒ Affects both Debtors ) 16th Floor  
San Francisco, CA  
\* All papers shall be filed in )  
the Lead Case, No. 19-30088 (DM). )

**TENTATIVE CONSIDERATIONS ON OBJECTIONS TO AMENDED AND RESTATED  
RESTRUCTURING SUPPORT AGREEMENT**

On December 4, 2019, the court will conduct a continued hearing on the proposed Amended and Restated Restructuring Support Agreement ("RSA"). At that hearing the court will consider further oral argument in support of or opposition to the RSA. The Debtors, the Ad Hoc Group of Subrogation Claim Holders ("Subro Group"), and others supporting the RSA will have

1 one hour to be divided as their counsel agree, including time  
2 for rebuttal. The Official Committee of Tort Claimants ("TCC"),  
3 the Official Committee of Unsecured Creditors and others  
4 opposing the RSA will also have one hour for oral argument, to  
5 be divided as their counsel agree.

6 In anticipation of that hearing the court has identified  
7 significant issues that should be addressed by the parties. The  
8 court has relied on the Subro Group's Statement of the Ad Hoc  
9 Group of Subrogation Claim Holders (Dkt. No. 4644), and in  
10 particular the Objection Response Chart filed concurrently  
11 therewith (Dkt. No. 4644-1).

12 The court sets forth its present views about several of  
13 those objections using the same categories and same definitions.

14 *I. Issues Addressed by Amended and Restated RSA*

15 #1 and #2 - Appear to be resolved satisfactorily.

16 #3 - The Subro Group and the Debtors appear duty bound to  
17 negotiate "together" with other creditor constituencies  
18 or in mediation. The court does not believe that is a  
19 constructive approach and believes that portion of the  
20 RSA should be disapproved.

21 #4 - This portion of the RSA addresses a situation that  
22 may exist "provided...the Bankruptcy Court determines  
23 Debtors are insolvent..." As a practical matter the court  
24 may not be able to make such a determination without the  
25 initiation of a contested matter, opposition thereto,  
26 etc. The court believes the more appropriate outcome  
27 would be that the Debtors, if they concede that they are  
28 insolvent, would terminate the RSA. Following any such

1 determination, there would be no precondition that any  
2 such revised plan would not - or would - subordinate the  
3 Subro Group claims to the IP Claims.

4 #5 and #6 - Appear to be satisfactory resolutions of the  
5 pending objections.

6 #7 - Comments regarding Bankruptcy Court determination of  
7 insolvency are much the same as indicated above in #4.

8 #8 - A five business day notice procedure for an  
9 amendment to the RSA appears to be too short.

10 #9 - The parties should address what would happen if a  
11 submitter of a ballot did not indicate either an opt-in  
12 or an opt-out to the release provisions. Is "opt-out" the  
13 default?

14 In that same objection, the explanation appearing at  
15 page 7 of 19 appears satisfactory.

16 *II. Objections Unaddressed by Clarifying Changes to the*  
17 *Amended RSA and Revised Plan*

18 ***I. Why Approval of the Amended RSA Should Not Be***  
19 ***Delayed due to Cash Considerations or Other***  
20 ***Proceedings***

21 #1 - The court is of the view that the question of  
22 whether the \$11 billion payment to the Subro Group would  
23 force the IP parties to take non-cash consideration is a  
24 plan issue that need not be dealt with in consideration  
25 of the RSA.

26 #2 - The court does not share the view that approval of  
27 the RSA will undermine the mediation process.

28 #3 and #4 - The court is satisfied with the explanation  
provided by the Subro Group.

1                   **II. Why the Amended RSA Does Not Violate the Rights of**  
2                   **Individual Insured Parties**

3                   #5 - The court will not address the question of whether  
4                   the TCC is estopped as the Subro Group's explanation is  
5                   argumentative. It is correct, however, that the RSA is  
6                   predicated upon confirmation of a plan that must comply  
7                   with AB 1054. Further, the made-whole doctrine should be  
8                   considered on a claim-by-claim basis and perhaps needs to  
9                   be resolved independently of the RSA determination  
10                  through AP 19-3053.

11                #6 and #7 - The court agrees with the Subro Group that  
12                insurers can pursue and settle claims independently of  
13                those of their insureds. Further, 11 U.S.C. § 509 does  
14                not appear to be implicated although applicable state law  
15                does.

16                #8 - The court rejects the contention that the RSA  
17                violates the Subro Group's obligations and duties of good  
18                faith under California law or California insurance  
19                regulations.

20                **III. Why the Amended RSA Releases are Permissible**

21                #9 - The court agrees with the Subro Group. It makes no  
22                comment regarding TCC proposed plan's inclusion of third  
23                party releases. It also agrees with the Subro Group that  
24                the Settlement Payment Condition is not coercive and  
25                essentially does leave the parties the same choice absent  
26                approval of the RSA. Hard choices are still choices, not  
27                coercion.

28                //

1                   **IV.   Why Specific Amended RSA and Form of Release**  
2                   **Provisions are Permissible**

3                   #10 - See comment above (I, #4) regarding the consequence  
4                   of Debtors being determined to be insolvent.

5                   #11 - The court agrees that the Subro Group can make a  
6                   strategic decision about voting for or against the plan.  
7                   Either way, AB 1054 says what it says if Debtors are  
8                   unable to emerge by its deadline. The consequences of a  
9                   \$20 billion claim asserted by the Subro Group need not be  
10                  addressed at this point.

11                 #12 - The court agrees with the Subro Group that the RSA  
12                 can include common features found in other restructuring  
13                 support agreements.

14                 #13 and #14 - The RSA releases appear to be symmetrical  
15                 and reciprocal and need not be disapproved.

16                 #15 - The notion of including consents by fire victims as  
17                 part of a confirmation order implicates the adequacy of  
18                 any disclosure statement. The court prefers a simple  
19                 statement included in any ballot submitted to and  
20                 returned by the fire victims.

21                 #16 - The court has no comment.

22                   **V.   The Applicable Standard of Review is Deferential to**  
23                   **the Debtors' Business Judgment**

24                 #17 - While *A & C Properties* is generally the authority  
25                 to test the reasonability of a settlement under Fed. R.  
26                 Bankr. P. 9019, the court is inclined to agree with the  
27                 TCC that scrutiny under the "fair and equitable" test  
28                 appears appropriate in this case.

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1                   ***VI. Remaining Objections Should be Overruled***

2                   #18 and #19 - The exigencies of this complex case are  
3                   such that the court is not worried that approval of the  
4                   RSA constitutes an impermissible *sub rosa* plan, nor does  
5                   it constitute impermissible solicitation under 11 U.S.C.  
6                   § 1125.

7                               \*\*END OF TENTATIVE CONSIDERATIONS\*\*  
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